

NEW GLARUS SCHOOL DISTRICT

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July 3, 2017

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554
ELECTRONICALLY FILED VIA ECFS

Re CC Docket No. 02-6

**In the matter of Request for Review by New Glarus School District of a
Decision of the Universal Service Administrator**

**Funding App #553171 FRN 1526656 cited on FCC Form 486 #1201687
Funding App #863619 FRN 2353086 cited on FCC Form 486 #1201707
Funding App #863619 FRN 2352947 cited on FCC Form 486 #1201707
Funding App #925993 FRN 2527485 cited on FCC Form 486 #1201727
Funding App #988781 FRN 2698058 cited on FCC Form 486 #1201747
Funding App #988781 FRN 2698010 cited on FCC Form 486 #1201747
Funding App #988781 FRN 2697900 cited on FCC Form 486 #1201747
Funding App #1049661 FRN 2866469 cited on FCC Form 486 #1201748**

Dear Secretary Dortch,

With this letter New Glarus School District ("NGSD") appeals¹ a decision by the Universal Service Fund Administrator ("USAC")² under the Schools and Libraries Universal Service Support Mechanism (commonly known as "E-Rate") to deny our request on appeal to USAC³ to set the funding Service Start Date to the first day of the funding year for the captioned Funding Requests.

¹ Any party aggrieved by an action taken by the Administrator, after seeking review from the Administrator, may then seek review from the Federal Communications Commission; see 47 CFR § 54.719(b).

² See USAC appeal decision attached as Exhibit B. Although USAC only named Funding Application #1049661 in its 5/4/2017 appeal decision letter, our 2/1/2017 appeal letter to USAC cited the eight funding requests and five funding applications listed in the caption. Since the identical circumstances are present in all of the funding requests cited here and in our 2/1/2017 appeal letter, we believe that it is only due to a USAC clerical or ministerial error that USAC's decision letter did not cite all five funding applications. We therefore ask for relief with respect to all of the eight funding requests cited here.

³ See our 2/1/2017 appeal letter to USAC attached as Exhibit A.

NGSD also asks for a waiver of the January 29, 2017, effective appeal deadline for untimely filed FCC Forms 486⁴, since our appeal to USAC was filed only three days late.

Background

NGSD is a top-rated small school district with a population of just under one thousand students. We are committed to helping each child reach his or her potential in a safe learning environment.

During an internal review we recently determined that staff had inadvertently failed to file certain required FCC Forms 486; when we recognized the error, we promptly completed and submitted the missing forms.

Although NGSD management does exercise its best efforts to ensure compliance with all E-Rate rules and deadlines, realistically it is beyond the control of NGSD to totally eliminate the possibility of the isolated clerical or administrative error.

Analysis

Due to factors not reasonably within its control, NGSD was unable to fully comply with the requirement to file Form 486 by the normal 120 day limit after the latter of the service start date and the Funding Commitment Decision Letter. To the best of our knowledge we are otherwise in full compliance with applicable FCC rules and USAC procedures.

In *Alaska Gateway*⁵ the Wireline Competition Bureau ("Bureau") found that where special circumstances are present and an FCC Form 486 was not filed on a timely basis, good cause exists to grant a waiver of the filing deadline and direct USAC to process the applicant's FCC Form 472 reimbursement application without a postponement of the funding start date. The Bureau noted that in these cases the applicants missed a procedural deadline and did not violate a substantive rule. The Bureau has consistently applied the *Alaska Gateway* standard in subsequent orders granting waivers of the Form 486 filing deadline, including *State of Arkansas Department of Information Systems*⁶, *Alcona County Library*⁷, *Children of Peace School*⁸, *Academy St. Benedict – Stewart*⁹, *Bancroft Neurohealth*¹⁰, *Archdiocese of Chicago School*¹¹, *Beebe Public Schools*¹², and *Albertville City Schools*¹³.

⁴ See *Archdiocese of New Orleans et al*, 31 FCC Rcd 11747 (2016)

⁵ *Alaska Gateway School District et al*, 21 FCC Rcd 10182 (2006)

⁶ *State of Arkansas Department of Information Systems et al*, 23 FCC Rcd 9373 (2008)

⁷ *Alcona County Library et al*, 23 FCC Rcd 15500 (2008)

⁸ *Children of Peace School et al*, 25 FCC Rcd 5492 (2010)

⁹ *Academy St. Benedict – Stewart et al*, 25 FCC Rcd 17309 (2010)

¹⁰ *Bancroft Neurohealth et al*, 26 FCC Rcd 10948 (2011)

¹¹ *Archdiocese of Chicago School*, 27 FCC Rcd 200 (2012)

¹² *Beebe Public Schools*, 27 FCC Rcd 3930 (2012)

The cited orders are consistent with *Bishop Perry*¹⁴, where the Commission found that under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of section 254 of the Telecommunications Act of 1996 – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.

The Bureau further noted in *Alaska Gateway* and in *Alcona County Library* that denying the petitioners’ requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. That would certainly be the case if NGSD were to be denied the opportunity to request reimbursement for its eligible expenses for the entirety of the funding year. The consequences of a denial of funding would not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

The Bureau recently gave notice in *Archdiocese of New Orleans*¹⁵ that a less-flexible standard will apply to appeals of USAC’s denial of requests to late-file FCC Forms 486 when initial appeals are filed on or after January 30, 2017, and in the same order the Bureau stated that the *Alaska Gateway* standard would apply to appeals filed prior to that date. This effectively established an initial appeal deadline of January 29, 2017, for E-Rate applicants seeking to set the Service Start Date for a funding request listed .

We filed our initial appeal with USAC on February 1, 2017; therefore, we missed the appeal deadline set in *Archdiocese of New Orleans* by only three days. In numerous situations where an E-Rate applicant missed an appeal deadline by just a few days, the Bureau has waived the filing deadline¹⁶. We respectfully request that the Bureau apply that precedent to instant petition, and that the Bureau apply the *Alaska Gateway* standard to our request for review of USAC’s denial of our initial appeal.

¹³ *Albertville City Schools*, 27 FCC Rcd 6094 (2012)

¹⁴ *Bishop Perry Middle School et al*, 21 FCC Rcd 5316 (2006)

¹⁵ See *Archdiocese of New Orleans et al*, *supra*

¹⁶ E.g., see *ABC Unified School District Order, et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late).

Ms. Marlene H. Dortch
July 3, 2017
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Request for Relief

For the reasons stated in this letter, NGSD respectfully requests that the Bureau direct USAC to set the Service Start Date to the first day of the funding year for each cited funding request. We also ask that the Bureau, consistent with precedent, direct USAC to waive any of its subsequent deadlines related to the late-filed FCC Form 486¹⁷, including the deadline for invoicing USAC for reimbursement¹⁸.

Finally, on behalf of our current students, NGSD respectfully requests that the Bureau expedite consideration of this petition. Timely action by the Bureau would support the goals of the E-Rate program, especially with respect to our current students whose educational success would be compromised by a delay in our receipt of our committed E-Rate reimbursement funds.

NEW GLARUS SCHOOL DISTRICT

Don Malaise
Network Coordinator

¹⁷ E.g., see *Children of Peace School et al*, footnote 24

¹⁸ For example, the Bureau might clarify that when USAC notifies us that the Service Start Date has been set to the first day of the funding year, such notification will be deemed to have the effect of an FCC Form 486 Notification Letter (regardless of whether the letter is explicitly identified as such) with respect to the invoice deadline provisions at 47 CFR § 54.514(a)(2).

EXHIBIT A

TO JULY 3, 2017 REQUEST FOR REVIEW
BY NEW GLARUS SCHOOL DISTRICT
OF A DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR

FEBRUARY 1, 2017 APPEAL LETTER
FROM DAVID A. BEHAR
TO UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
and
USAC SUBMISSION RECEIPT CONFIRMATION



E-Rate Support Services

"Your source for E-Rate support"

P.O. Box 40204 • Spokane, WA 99220
ph. 206-856-7349 • email david@eratesupportservices.com

February 1, 2017

Schools and Libraries Program Correspondence Unit
Attn: Letter of Appeal
Parsippany, NJ
VIA EMAIL appeals@sl.universalservice.org

Re: New Glarus School District (BEN 132983)
Service Start Date adjustment for FCC Forms 486 Nos. 1201687, 1201707,
1201727, 1201747, 1201748

Today applicant New Glarus School District ("Applicant") electronically submitted the captioned FCC Forms 486, and today Applicant mailed signed certification pages for each FCC Form 486. The certification forms were sent via USPS Priority express (Tracking Number EL 383485285 US).

These Form 486s are submitted after the E-Rate procedural deadline¹ due to factors which included staff changes, staff shortages due to limited budgets, and confusion about filing requirements.

Applicant prays that the service start date for each Funding Request listed in the FCC Forms 486 is not adjusted due to the late filing, but rather that the service start date is set to be the first day of the applicable funding year.

Please feel free to contact me regarding this matter; my contact information appears on the first page of this letter.

Respectfully,

David A. Behar

¹ FCC Form 486 must be received or postmarked no later than 120 days after the Service Start Date shown on the FCC Form 486 or 120 days after the date of the FCDL, whichever is later (<http://usac.org/sl/applicants/step05/form-486.aspx>, retrieved 1/27/2017).



David B <david271@gmail.com>

Appeal

Appeals <appeals@sl.universalservice.org>

Wed, Feb 1, 2017 at 6:53 PM

To: "David A. Behar" <david@eratesupportservices.com>

Thank you for submitting your correspondence by e-mail to the Schools & Libraries Division (SLD) of the Universal Service Administrative Company.

This message serves as a receipt confirmation of your submission.

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EXHIBIT B

TO JULY 3, 2017 REQUEST FOR REVIEW
BY FLOYD MUNICIPAL SCHOOL DISTRICT
OF A DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR

INDEX OF USAC APPEAL DECISION LETTERS

1. USAC 5/4/2017 letter re Funding App #1049661

Due to a technical issue with image scanning equipment, copies of USAC appeal decision letters will be submitted as a supplemental filing via ECFS later this week.